

FILED

JUL 27 2006

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JOSE DE JESUS OROZCO-TREJO,

Defendant - Appellant.

No. 05-50577

D.C. No. CR-04-01158-TJW

MEMORANDUM^{*}

Appeal from the United States District Court
for the Southern District of California
Thomas J. Whelan, District Judge, Presiding

Submitted July 24, 2006^{**}

Before: ALARCON, HAWKINS, and THOMAS, Circuit Judges.

Jose De Jesus Orozco-Trejo appeals from the sentence imposed following his guilty plea to unlawful reentry of a deported alien, in violation of 8 U.S.C. § 1326.

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Orozco-Trejo contends that district court err by sentencing him to a term of 64 months when he only pled to the elements of 8 U.S.C. § 1326(a), which carries a maximum sentence of two years and that *Almendarez-Torres v. United States*, 523 U.S. 224 (1998) is no longer good law in light of intervening Supreme Court decisions, specifically *Shepard v. United States*, 544 U.S. 13 (2005), and *Dretke v. Haley*, 541 U.S. 386 (2004). These contentions are foreclosed. *See United States v. Beng-Salazar*, 2006 WL 1843394 *5 (9th Cir. 2006, July 6) (rejecting after *Shepard* and *Haley*, the specific contention that a section 1326(b) enhancement cannot be applied where the defendant did not admit his prior conviction during a guilty plea); *United States v. Weiland*, 420 F.3d 1062, 1080 n.16 (9th Cir. 2005) (holding that we are bound to follow *Almendarez-Torres* even though it has been called into question, unless it is explicitly overruled by the Supreme Court).

We also reject Orozco-Trejo's contention that the enhanced sentenced was inappropriate because the government did not allege, nor did Orozco-Trejo admit, the date of his deportation. *See United States v. Castillo-Rivera*, 244 F.3d 1020, 1024-25 (9th Cir. 2001) (holding that a temporal relationship is not required); *see also United States v. Hernandez-Hernandez*, 431 F.3d 1212, 1216-17 (9th Cir. 2005) (rejecting a Sixth Amendment challenge where the indictment did not specify that the deportation was subsequent to the predicate conviction).

____**AFFIRMED.**